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Attorneys for Plaintiffs,

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALFRED ZAKLIT AND JESSY
ZAKLIT, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

vs.

NATIONSTAR MORTGAGE LLC,

Defendant.

Case No.: 5:15-CV-02190-CAS-KK

**JOINT STIPULATION TO
DISPERSE CY PRES FUNDS**

1 Plaintiffs, ALFRED ZAKLIT and JESSY ZAKLIT, on behalf of themselves
2 and all others similarly situated (“Plaintiffs”) and Defendant, NATIONSTAR
3 MORTGAGE LLC (“Defendant”) file this Stipulation to approve Cy Pres Recipients
4 for the residue remaining from uncashed settlement checks previously mailed to class
5 members.

6 The parties hereby stipulate, by and through their attorneys of record, to the
7 following:

8 1. WHEREAS, this stipulation incorporates by reference the capitalized
9 terms in the parties’ Settlement Agreement;

10 2. WHEREAS, on August 21, 2019, the Honorable Court granted Final
11 Approval of the proposed class action settlement (Dkt. No. 128);

12 3. WHEREAS, settlement checks were distributed to class members in
13 accord with the terms of the Final Approval Order and Settlement Agreement;

14 4. WHEREAS, the deadline for class members to cash their settlement
15 checks has now expired;

16 5. WHEREAS, after distribution of settlement payments to class members
17 and deduction of fees and costs, there remains \$15,341.59 left in the settlement fund
18 from uncashed settlement checks;

19 6. WHEREAS, both parties have agreed that the residual balance of the
20 settlement fund shall be paid 50% to The Electronic Privacy Information Center and
21 50% to MBA Open Doors in the form of a Cy Pres Award;

22
23
24
25 **THE COURT SHOULD ISSUE A *CY PRES* DISTRIBUTION FROM THE**
26 **REMAINDER OF THE SETTLEMENT FUND**
27

28 The Court retains its traditional equitable powers in determining the method in

1 which to distribute settlement funds. *Powell v. Georgia-Pacific Corp.*, 843 F. Supp.
 2 491, 495 (W.D. Ark. January 31, 1995); *see also Beecher v. Able*, 575 F.2d 1010,
 3 1016 (2d Cir. 1978); *In re Agent Orange Product Liability Litigation*, 611 F. Supp.
 4 1396, 1402 (E.D. N.Y. 1985). As such, Plaintiffs respectfully request that this Court
 5 approve a *cy pres* distribution.

6 **A. CY PRES DISTRIBUTION OF UNCASHED CHECKS**

7 Consistent with the terms of the approved Settlement Agreement, Plaintiffs
 8 and Defendant have now stipulated and requested that the Court approve a *cy pres*
 9 distribution of the remaining unclaimed, residual funds to Epic and MBA Open
 10 Doors as *cy pres* recipients.

11 The doctrine of *cy pres* allows a court to distribute unclaimed portions of a
 12 class action settlement fund to the “next best” class of beneficiaries. *See Six Mexican*
 13 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307–08 (9th Cir. 1990). The Ninth
 14 Circuit directs courts to consider the following factors in determining whether awards
 15 to the proposed *cy pres* beneficiary, or beneficiaries, are appropriate: (1) the nature
 16 of the plaintiffs’ lawsuit; (2) the objectives of the underlying statutes; and (3) the
 17 interests of the silent class members, including their geographic diversity. *Nachshin*
 18 *v. AOL, LLC* 663 F.3d 1034, 1040 (9th Cir. 2011).

19 **B. THE ELECTRONIC PRIVACY INFORMATION CENTER (EPIC) IS AN** 20 **APPROPRIATE CY PRES RECIPIENT**

21 The Court should approve EPIC as an appropriate *cy pres* recipient.

22 **1. Nature of lawsuit**

23 This lawsuit was brought to obtain damages for alleged violations of various
 24 consumer protection acts, on behalf of Plaintiffs and a putative class of persons who
 25 alleged invasions of privacy in connection with alleged illegal recording of their calls
 26 with their mortgage servicer. Providing a *cy pres* award to EPIC to foster protection
 27 of consumer privacy interests is in line with the nature of the Plaintiffs’ lawsuit, and
 28 Plaintiffs’ goals in filing it.

1 **2. Interest of silent class members**

2 The interests of the silent class members would be advanced through a *cy pres*
3 award to Epic as explained below.

4 **i. EPIC**

5 One of the main goals of EPIC is to focus public attention on emerging privacy
6 and civil liberties issues and to protect privacy, freedom of expression, and
7 democratic values in the information age. From its website, Epic “pursues a wide
8 range of program activities including policy research, public education, conferences,
9 litigation, publications, and advocacy. EPIC routinely files amicus briefs in federal
10 courts, pursues open government cases, defends consumer privacy, organizes
11 conferences for NGOs, and speaks before Congress and judicial organizations about
12 emerging privacy and civil liberties issues.”

13 Because of the “diverse advocacy” of EPIC, courts across the country have
14 held that Epic was an appropriate *cy pres* recipient from cases that run the gambit of
15 the consumer protection field, including, most prudently, privacy breach cases.
16 Accordingly, the parties believe that a *cy pres* distribution to EPIC will appropriately
17 serve the interests of silent class members, the Plaintiffs, and the goals of the instant
18 lawsuit

19 **D. MBA OPEN DOORS IS AN APPROPRIATE *CY PRES* RECIPIENT**

20 The Court should approve MBA Open Doors as appropriate *cy pres* recipient.

21 **1. Nature of lawsuit**

22 This lawsuit was brought to obtain damages for alleged violations of various
23 consumer protection acts, on behalf of Plaintiffs and a putative class of persons who
24 were allegedly called by their mortgage servicer and recorded without their consent
25 while attempting to collect payment from the consumers. MBA Open Doors Assists
26 families with critically ill children in making mortgage or rental payments. Providing
27 a *cy pres* award to MBA Open Doors to foster protection of consumers when it comes
28

1 to mortgage collections interests is in line with the nature of the Plaintiffs' lawsuit,
2 and Plaintiffs' goals in filing it.

3 **2. Interest of silent class members**

4 The interests of the silent class members would be advanced through a *cy pres*
5 award to MBA Open Doors as explained below.

6 **ii. *MBA Open Doors***

7 One of the main goals of MBA Open Doors is to ensure that families with
8 critically ill children have the ability to make their mortgage or rental payments.

9 MBA Open Doors, on its website, indicates "The MBA Opens Doors
10 Foundation is dedicated to providing the comforts of home to families in crisis.
11 Through our home grant program, we provide mortgage and rental payment
12 assistance grants to parents and guardians caring for a critically ill or injured child,
13 allowing them to take unpaid leave from work and spend precious time together
14 without jeopardizing their cherished homes." Accordingly, the parties believe that a
15 *cy pres* distribution to MBA Open Doors will appropriately serve the interests of
16 silent class members, the Plaintiffs, and the goals of the instant lawsuit.

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19 THEREFORE, IT IS HEREBY STIPULATED by and between the Parties,
20 through their respective counsel of record, subject to the Court's approval, that:

21 1. EPIQ Systems, the Class Action Administrator in this matter, shall pay
22 the remaining balance of the settlement fund of \$15,341.59 as follows: 50% to The
23 Electronic Privacy Information Center and 50% to MBA Open Doors, within thirty
24 days.

IT IS SO STIPULATED.

Dated: January 29, 2021

LAW OFFICES OF TODD M. FRIEDMAN,
P.C.

By: /s/ Adrian R. Bacon

Todd M. Friedman
Adrian R. Bacon

Attorneys for Plaintiffs

Dated: January 29, 2021

SEVERSON & WERSON, P.C.

By: /s/ Erik
Kemp

John B. Sullivan
Erik Kemp
Attorneys for Defendant
NATIONSTAR MORTGAGE LLC

CERTIFICATE OF SERVICE

Filed electronically on this 29th day of January, 2020, with:

United States District Court CM/ECF system

Notification sent electronically on this 29th day of January, 2020, to:

Honorable Christina A. Snyder

United States District Court

Central District of California

John B. Sullivan

Erik Kemp

Attorneys for Defendant

NATIONSTAR MORTGAGE LLC

s/Adrian R. Bacon

Adrian R. Bacon